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Letter dated 16 June 2005 from the Secretary-General addressed to the President of the Security Council

I have the honour to bring to your attention resolution 1595 (2005), by which the Security Council established an international independent commission of the United Nations to investigate the killing of the former Prime Minister of Lebanon, Rafik Hariri, and 20 other persons. In paragraph 4 of this resolution, the Council requested me to notify it of the date on which the Commission would begin its full operations. In reply to this request, I hereby inform you that the Commission is fully operational as from today, 16 June 2005.

As you are aware, on 16 May I appointed Mr. Detlev Mehlis as Commissioner to head the work of the Commission. Mr. Mehlis arrived in Beirut on 26 May, began talks with the Lebanese authorities on the subject of the functioning of the Commission and embarked on a review of the evidence and information collected in the course of the investigations and inquiries into the crime.

This week, Mr. Mehlis brought to their conclusion some talks on a memorandum of understanding with the Lebanese Government, which I am attaching (see annex). He has been adding to the small team which accompanied him to Beirut and has begun to establish the headquarters of the Commission, keeping in mind the safety and security of his staff. He has instructed a team of explosives experts to examine whatever remained after the explosion which killed Mr. Hariri and the other victims. The experts have already formed an opinion on a number of critical points. Thanks to the progress which he and his colleagues have made, Mr. Mehlis was able to inform me that the Commission would enter its genuinely operational phase today.

Pursuant to paragraph 9 of resolution 1595 (2005), I intend to report orally to the Council every two months on the progress of the Commission's work, beginning from today.

(*Signed*) Kofi A. **Annan**

* Reissued for technical reasons.

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Annex

الأمم المتحدة
اللجنة المستقلة الدولية للتحقيق

UNITED NATIONS
INTERNATIONAL INDEPENDENT
INVESTIGATION COMMISSION

NATIONS UNIES
COMMISSION D'ENQUETE
INTERNATIONALE INDEPENDANTE

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF LEBANON

AND

THE UNITED NATIONS

REGARDING

THE MODALITIES OF COOPERATION FOR THE INTERNATIONAL INDEPENDENT INVESTIGATION COMMISSION

REAFFIRMING that the International Independent Investigation Commission (the "Commission"), established pursuant to UN Security Council resolution 1595 is to assist the Lebanese authorities in their investigation of all aspects of the 14 February 2005 terrorist bombing in Beirut, Lebanon that killed former Lebanese Prime Minister Rafic El Hariri and others.

RECALLING the letter of 29 March 2005 from the Chargé d'affaires a.i. of Lebanon before the United Nations to the Secretary-General expressing the readiness of the Government of the Republic of Lebanon (the " Government") to fully cooperate with the Commission within the framework of Lebanese sovereignty and of its legal system, as well as recalling the meetings between the Commission and the Government in which its intention was reiterated;

REAFFIRMING that the Commission is to determine its own procedures taking into account the Lebanese law and judicial procedures;

The Government and the United Nations, therefore, have agreed as follows:

1. The Public Prosecution Department of the Supreme Court, represented by the Public Prosecutor or his/her Deputy Directors, as delegated by him/her for this purpose, shall ensure coordination as appropriate, between the Commission and the Judicial Investigating Magistrate in charge of the judicial file and the investigation of the case.

2. The President of the Criminal Division of the Supreme Court shall ensure cooperation between the Commission, the Ministry of Justice and other Ministries concerned. This cooperation shall, *inter alia*, advise the Commission on the appropriate procedures for the collection of evidence in accordance with the Lebanese Law.

3. The Government shall guarantee that the Commission is free from interference in the conduct of its investigation, and is provided with all necessary assistance to fulfill its mandate, including:

    a- Provision of all documentary, testimonial and physical information and evidence in possession of the Lebanese authorities on the case as soon as possible, but no later than three (3) days after the signature of this MOU. Any additional documentary, testimonial or physical information and evidence that may be collected by the Lebanese authorities after the signature of this MOU, shall also be provided to the Commission as soon as possible, but no later than three (3) days from the date they were collected;

    b- Authority to collect any additional information and evidence, both documentary and physical, as well as to request any other judicial proceedings that the Commission may deem relevant to its investigation, as set out in Article 4 below;

    c- Freedom of movement throughout the Lebanese territory;

d- Unrestricted access to all places and establishments;

e- Freedom to meet and interview representatives of governmental and local authorities, military authorities, community leaders, non-governmental organizations and other institutions, and any such person whose testimony the Commission may wish to seek for the investigation, in an environment of security, confidentiality and tranquility; and

f- Appropriate security arrangements for the personnel and documents of the Commission, without restricting the freedom of movement and its investigation.

4. The Commission shall make requests for all witnesses or persons of relevance to the investigation to be summoned, and for any other necessary judicial proceeding, through the competent Lebanese authorities and in accordance with the procedures of the Lebanese Criminal Procedure Code. However, the Commission, if it considers it necessary, may interview the witnesses without requesting the intervention of the Lebanese authorities.

5. The Commission may participate in any search related to the case, carried out at its request or not. The Commission shall have the right to guide the competent authorities as to any action that should, or should not, be taken during such searches, with a view to preserving or obtaining evidence. The Judicial Investigating Magistrate may participate, upon the solicitation by the Commission as it may consider necessary, in the investigation proceedings, including visits to the scene of the crime, inspections, searches and testimonies that the Commission may request.

6. The Ministry of Justice will consider establishing, in consultation with the Commission, a witness protection programme.

7. Within three (3) days upon completion of the work, all judicial evidence that the Commission may have collected during its investigation shall be handed over to the Judicial Investigation Magistrate to be used, as appropriate, in accordance with Lebanese law, before Lebanese Courts.
However, during its investigations, and when it finds it suitable, the Commission can provide the Judicial Investigating Magistrate, a copy of the evidences that are collected.

8. The Government shall respect at all times the strict confidentiality of the investigation and of all aspects of the work of the Commission.

9. The Government shall provide free of charge suitable premises for the work of the Commission in a secure, confidential and tranquil environment and shall ensure its inviolability. The Government shall also provide alternative temporary locations, as necessary and as requested by the Commission, to conduct interviews and to collect testimony that may require special measures of security and confidentiality.

10. The Government shall apply the 1946 Convention on the Privileges and Immunities of the United Nations, to which the Republic of Lebanon acceded on 10 March 1949, to the Commission, its members, property, documents and assets, for the independent conduct of the investigation.

11. Any disagreement concerning the interpretation of this MOU shall be settled by negotiations. This MOU shall enter into force upon signature and shall remain valid until the conclusion of the work of the Commission.

Done in Beirut, on ..13.....June 2005, in two originals in the Arabic, English and French languages, all texts being equally authentic.

For the Government of the Republic of Lebanon
Minister of Justice

Khaled Kabbani

For the United Nations Commissioner

Detlev Mehlis